

## **REMARKS**

With this Response, Applicants respectfully request that claim 20 be canceled without prejudice. Claims 1, 8, and 14 are amended herein. Therefore, claims 1-19 are pending.

## **OBJECTIONS TO THE IDS**

The previous IDS was objected to. Applicants resubmit the Information Disclosure Statement concurrently herewith, and respectfully request that the references be considered.

## **OBJECTIONS TO THE SPECIFICATION**

Paragraph [0031] was objected to for including an embedded hyperlink. Applicants herein submit a version of the paragraph that has no embedded hyperlink.

Although not objected to, Applicants observe that "central database 230" should read -- central database 330--. Appropriate correction is provided above.

## **CLAIM REJECTIONS – 35 U.S.C. § 101**

Claims 14-19 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. More particularly, these claims were rejected as appearing to be directed to software per se (e.g., program code). The Office Action at page 4 asserts that if the claims are directed to a manufacture, the language of the specification makes the claim ineligible subject matter by containing a reference to a carrier wave.

Applicants submit that the claims as amended herein are directed to patentable subject matter. Namely, Applicants claims are amended to refer to an article of manufacture comprising a "machine readable storage medium including machine-readable instructions stored thereon...." See support in the Specification at paragraph [0085]. Whether or not Applicants' Specification includes the expression "carrier waves," Applicants' claims are directed to a "storage medium" having "instructions stored thereon," which excludes carrier waves. Carrier waves were defined by the U.S. Court of Appeals for the Federal Circuit as being incapable of storing instructions. See *In re Nuijten*. Thus, Applicants' claims are directed to statutory subject matter, and Applicants respectfully request that the rejection of these claims be withdrawn.

### **CLAIM REJECTIONS – 35 U.S.C. § 102**

Claims 1, 8, 12, 14, 18 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,061,721 of Ismael et al. (hereinafter "Ismael"). Applicants respectfully submit that these claims are not anticipated by the cited reference for at least the following reasons.

Claim 1 recites the following:

**a cluster of multiple application server instances and a central services instance** communicatively coupled **on a multi-tiered network** where presentation logic and business logic are logically separated from a user application instance executing on a client, the application server instances to serve applications over the network to a plurality of clients, each of the application servers comprising a plurality of server nodes, the central services instance to provide messaging and synchronization services between each application server instance;

a central database storing program code and configuration information for the application server instances;

a plurality of MBean servers assigned to the plurality of server nodes;

a plurality of runtime MBeans associated with specified resources on each of the plurality of server nodes and registered with one of the MBean servers, each of the runtime MBeans collecting and reporting monitoring data for its associated resource; and

cluster integration logic to compile resource data collected from each of the individual runtime MBeans via the MBean servers and to provide the compiled data in a predefined organizational structure to a management interface.

Claims 8 and 14 are likewise independent claims, and similarly recite limitations directed to a cluster of application server instances and a central service instance on a multi-tiered network.

Applicants first acknowledge that page 2 of the Final Office Action sets forth what aspects of the reference are intended to disclose specific aspects of the claimed invention. While such information should have been provided in the first Office Action to enable Applicants the ability to understand and respond to the rejection, Applicants kindly acknowledge the inclusion of the reasoning used to form the basis of the rejection.

However, as amended herein, Applicants' claims recite a cluster of application server instances and a central services instance. Applicants note that even a liberal interpretation of Ismael would not suggest to one of skill in the art the concept of a cluster of application server instances and a central services instance, as recited in Applicants' claims. The stations of Ismael are being interpreted in the Office Action to be several (hardware) servers networked together,

which does not suggest application server instances clustered together with a central services instance as claimed. Thus, Applicants submit that the reference fails to disclose or suggest at least one feature of the claimed invention, and so fails to anticipate the invention as recited in the independent claims.

### **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 2-7, 9-11, 13, 15-17 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ismael as applied to claims 1, 8, 14 and 20 above, and further in view of U.S. Patent Application No. 2002/0029298 of Wilson (hereinafter "Wilson"). Applicants respectfully submit that these claims are not rendered unpatentable by the cited references for at least the following reasons.

As shown above, Ismael fails to disclose or suggest at least one feature of the claimed invention as recited in the independent claims. Wilson is not cited as curing the deficiencies of Ismael; nor do Applicants understand Wilson to cure the deficiencies of Ismael. Thus, whether or not the Wilson reference discloses what is asserted in the Office Action, which Applicants do not concede, the combination of Wilson and Ismael fails to render obvious the invention as recited in Applicants' claims. Whether alone or in combination, the references fail to disclose or suggest at least one feature of the invention as recited in the independent claims, and so fail to support an obviousness rejection of the independent claims. See MPEP § 2143. When an independent claim is nonobvious over the cited references, the dependent claims are necessarily nonobvious over the cited references, per MPEP § 2143.03. Therefore, Applicants respectfully request that the rejection of the claims be withdrawn.

## **CONCLUSION**

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, all pending claims are in condition for allowance, and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,  
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I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

Date: 2/26/2008

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